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4 FROYLAN SANCHEZ,
5 Plaintiff,
6 v.
7 KEENER, et al.,
8 Defendants.

9 Case No. 22-cv-03545-JSW

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11 **ORDER OF DISMISSAL**

12 **INTRODUCTION**

13 Plaintiff, a federal prisoner in Oregon, filed this pro se civil rights action under 42 U.S.C. §
14 1983 against officers of the Napa Police Department in Napa, California, where he was arrested,
15 as well as against the Napa County Sheriff's Department. His complaint was dismissed with
16 leave to amend by Magistrate Judge Virginia DeMarchi. Plaintiff filed a timely amended
17 complaint, and the case was reassigned to the undersigned District Judge. For the reasons
18 discussed below, the case is DISMISSED because Plaintiff did not cure the deficiencies in his
19 original complaint.

20 **STANDARD OF REVIEW**

21 Federal courts must engage in a preliminary screening of cases in which prisoners seek
22 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
23 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
24 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
25 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se
26 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
27 Cir. 1990).

28 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the

1 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
2 statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon
3 which it rests.""" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although
4 in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's
5 obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and
6 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
7 Factual allegations must be enough to raise a right to relief above the speculative level." *Bell*
8 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint
9 must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974.

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
11 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
12 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
13 487 U.S. 42, 48 (1988).

14 DISCUSSION

15 The original complaint was dismissed with leave to amend to correct the following
16 deficiencies: to allege that he was suing defendant Keener in an individual capacity and not only
17 official capacity (which would subject it to dismissal), and to identify other individual officers
18 rather than the non-specific term "Napa Sheriffs" who were involved in the alleged violations of
19 his rights and whom he wishes to sue, and to include sufficient facts describing their involvement
20 in the alleged violations to state a plausible claim against them. (ECF No. 8.) The amended
21 complaint does not correct any of these deficiencies.¹

22 First, Plaintiff again asserts that he is suing defendant Keener in an official capacity.
23 Second, Plaintiff names a new Defendant, Detective Kvamme or Kvumme (he spells it both
24 ways) but provides no specific allegations explaining how this individual was involved in the
25 underlying incident. Lastly, Plaintiff again makes general allegations against "Napa Sheriffs"
26 without specifying the individual(s) who allegedly failed to intervene in the other Defendants'

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28 ¹Plaintiff was mailed the Court's form complaint to use to file his amended complaint, but he did
not use the form.

1 violations. By failing to cure the deficiencies in the original complaint, the amended complaint
2 does not state a cognizable claim for relief against Defendants.

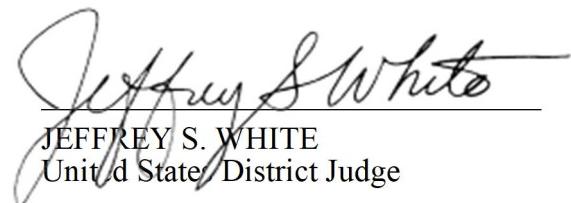
3 **CONCLUSION**

4 Accordingly, this case is DISMISSED for failure to state a claim upon which relief may be
5 granted. The Clerk shall enter judgment and close the file.

6 **IT IS SO ORDERED.**

7 Dated: March 7, 2023

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JEFFREY S. WHITE
United States District Judge